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Tax News: Be Careful, IRS Can Even Dispute FedEx Filings

Taxes and deadlines go hand in hand. Most years it is April 15, but this year it is July 15. Of course, you can extend until October 15. Just remember that extending to October doesn't extend the payment due date of July 15, so try to make an accurate estimate what you will owe. How about other tax deadlines? There are many, and one key one involves an IRS Notice of Deficiency after an audit.

After an audit, the IRS generally writes it up and proposes more taxes. You can "protest" to the IRS in writing, which sends your tax dispute to the IRS Appeals Office where many tax disputes are resolved. If you fail to protest, or if you do not resolve your case at IRS Appeals, you'll next receive an IRS Notice of Deficiency via certified mail. It can't come any other way.

A Notice of Deficiency is often called a 90-day letter, because you have 90 days to respond. Writing to the IRS to protest a Notice of Deficiency is a waste of time. In fact, only *one* response to a Notice of Deficiency is permitted: filing a Tax Court petition in the U.S. Tax Court clerk's office in Washington, D.C., Tax Court judges hear cases in federal courthouses all over the country, but the clerk's office is in Washington.

If you miss the 90-day deadline, the U.S. Tax Court cannot hear your case. That's what happened in *Organics Cannabis Foundation LLC v. Commissioner* (Ninth Cir. June 18, 2020), which involved several marijuana dispensaries. They face extra tough tax treatment, since the tax code flatly disallows all tax deductions for any business that consists of "trafficking in controlled substances." Marijuana is legal in many states, but federal criminal law and tax law hasn't caught up. In short, tax disputes are common.

The dispensaries tried to file their petitions in Tax Court April 22, 2015, the last day in their 90 days. They used FedEx, which tried to deliver but ended up coming back the next day, one day too late. It's not clear how the delivery went bad, but the Tax Court and the Ninth Circuit rejected the argument that the clerk's office was inaccessible. The dispensaries had no evidence that the Tax Court Clerk's Office was not open during the rest of the day after FedEx unsuccessfully tried.

The court said the dispensaries had all day to keep bugging FedEx, to mail a copy by U.S. mail, etc. But isn't mailing *usually* "filing" for tax purposes? Yes, and if the

dispensaries had sent the petitions regular U.S. mail, that would have been true. Postmarking is what counts, even if it had taken the Postal Service a week to deliver.

The IRS lists *some* FedEx services as qualifying, but the dispensaries used a FedEx service not on the IRS's list at the time. You could send "FedEx Priority Overnight" and "FedEx Standard Overnight," but not "FedEx First Overnight."

Why does Tax Court matter? There, you can dispute taxes before you pay. If you miss out there, you have to pay and sue for a refund. When it comes to tax matters, procedure isn't everything, but it is awfully important. Learning that the hard way can be painful.

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